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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 384 (PAE)

5 BEKIM FISEKU and SEFEDIN JAJAGA,

6 Defendants.

7 -----x

8 New York, N.Y.
9 July 15, 2015
10 10:30 a.m.

11 Before:

12 HON. PAUL A. ENGELMAYER,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 ROBERT W. ALLEN

Assistant United States Attorney

18 JAMES R. FROCCARO

19 Attorney for Defendant Fiseku

20 IRVING COHEN

21 SARA TOMAR

Attorneys for Defendant Jajaga

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(Case called)

MR. ALLEN: Good morning, your Honor. Robert Allen, for the government.

MR. FROCCARO: Good morning, your Honor. James Froccaro, for Mr. Fiseku.

MR. COHEN: Good morning, your Honor. Irving Cohen appearing for Mr. Jajaga.

THE COURT: Good morning. This is our initial conference in the case.

Mr. Allen, can you tell me a little bit about the case.

MR. ALLEN: Sure, your Honor. The indictment in this case, 15 Cr. 384, was returned by the grand jury on September 18.

THE COURT: September?

MR. ALLEN: I'm sorry. June 18. It was not returned in the future. It charges the defendants with conspiring to commit a robbery, in violation of the Hobbs Act. The robbery as alleged in the indictment, or the conspiracy is alleged to have occurred in September 2014. The defendants were presented on June 22, 2015, upon your Honor's referral. We have produced an initial set of discovery on July 9, which Mr. Froccaro has received and Mr. Cohen has not yet received because we put the wrong suite number, unfortunately, but I will give that to him shortly. I want to confer with the case agents, but I

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1 anticipate we'll be able to complete discovery within 10 to 14
2 days.

3 THE COURT: All right. I have a handful of questions
4 for you. Thank you. First of all, I take it time was excluded
5 when the case was presented to the magistrate.

6 MR. ALLEN: It was not.

7 THE COURT: You're telling me time has run in this
8 case for a month?

9 MR. ALLEN: No. Time ran from the 22nd, when the
10 presentment occurred, and we didn't ask to exclude time at that
11 point because we hadn't produced discovery and there weren't
12 any ongoing plea discussions or dispositions taking place at
13 that time.

14 THE COURT: Wait a minute. You're telling me we're
15 having an initial conference, no time has been excluded, so
16 maybe three weeks or more have run?

17 MR. ALLEN: No. We initially had a conference set for
18 July 7 and in part based on the proximity of that date we
19 didn't ask to exclude time. Due to the unavailability of
20 counsel, we moved the conference until today so we put in a
21 letter on July 6 to ask to exclude time, and your Honor
22 excluded time in response to that letter.

23 THE COURT: From the sixth on?

24 MR. ALLEN: I think the order just says time is
25 excluded in this case.

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1 THE COURT: It's prospective. So just to be clear,
2 the days between June 22 and July 6 have run off the clock?

3 MR. ALLEN: Correct.

4 THE COURT: For future reference, my strong desire is
5 not to have time needlessly run off the speedy trial clock. If
6 time is running, you need to alert my chambers right away so I
7 can have the conference right away, and if there's a *bona fide*
8 reason to exclude the time we'll do it. It may well be that
9 there were good reasons or good justifications to do that. But
10 it ties the government's hands, the defense's hands,
11 potentially, and my hands to have the time running for no good
12 reason. For future reference, and I'm sure I'm speaking for my
13 colleagues as well, if you see the clock running in a case,
14 alert chambers so the judge can decide what to do.

15 MR. ALLEN: Will do. I apologize, your Honor.

16 THE COURT: No worries, but it's just good practice.
17 It's a flexible statute that permits lots of good reasons to
18 exclude time, but some are only prospective in nature.

19 MR. ALLEN: Yes.

20 THE COURT: Tell me a little more about the actual
21 robbery in question. What is alleged to actually have
22 happened?

23 MR. ALLEN: The defendants purchased marijuana or
24 engaged in a marijuana transaction with the alleged victim of
25 the robbery. Apparently that transaction went poorly and

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1 caused the defendants to want to commit the robbery based on
2 their interest in getting some money back. The victim of the
3 robbery was believed by the defendants to be a marijuana
4 dealer. So in September 2014, the defendants drove to the
5 vicinity of the victim's residence. While on the way to the
6 defendant's residence, they were stopped by a police officer,
7 Mr. Jajaga was in the vehicle at that point. Two other
8 individuals, including Mr. Fiseku, were walking sort of near
9 the residence that was going to be robbed. The police officer
10 basically asked whether Mr. Jajaga was OK, saw late at night a
11 car pulled over by the side of the street; then left. That
12 caused the defendants to decide to leave, basically. And the
13 same officer encountered the defendants later in the night.
14 There was a search of the vehicle which recovered robbery
15 equipment, Taser, fake pistols, NYPD-logo merchandise.

16 THE COURT: So it was ultimately an unconsummated
17 conspiracy.

18 MR. ALLEN: Correct.

19 THE COURT: Thank you. Tell me about the discovery
20 you have produced already, I gather you produced to
21 Mr. Froccaro and have attempted to get it to Mr. Cohen and will
22 replicate the Froccaro production to Mr. Cohen. What have you
23 already produced?

24 MR. ALLEN: We have produced pictures of evidence that
25 was seized in the police stop I just described, as well as a

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1 report that was generated by the officers. We've produced
2 emails that have been sent by Mr. Fiseku that were recorded by
3 the MCC, produced defendants' criminal history records. And I
4 think that's basically about it, your Honor.

5 THE COURT: What discovery remains to be produced?

6 MR. ALLEN: There's a little bit of discovery with
7 respect to the victim, which relates to basically how we know
8 that he was a drug dealer.

9 THE COURT: What does that mean? Is it his criminal
10 record? Is it something else?

11 MR. ALLEN: We'll produce some evidence that shows
12 that the victim was actually selling marijuana.

13 THE COURT: I'm sorry. I'm trying to be more
14 tangible. What Rule 16 evidence regarding the victim are you
15 saying you're going to soon produce?

16 MR. ALLEN: We have a journal that was seized in an
17 airport.

18 THE COURT: A?

19 MR. ALLEN: Drug ledger that was seized at an airport,
20 and then I want to confer with the case agents and make sure
21 I'm not missing anything.

22 THE COURT: Other than the drug ledger, is there any
23 other outstanding Rule 16 discovery?

24 MR. ALLEN: Again, I would ask for ten days or so just
25 to confer with the case agents to make sure there's nothing

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1 else, but I don't believe there will be.

2 THE COURT: One thing I try to determine at the
3 initial conference is whether there are any events that
4 occurred here that by their nature might potentially give rise
5 to a suppression motion. Of course, I don't mean that you're
6 to tell me whether or not any constitutional right was
7 violated; I'm just trying to identify searches, seizures,
8 postarrest statements, lineups, show-ups, that sort of thing.
9 So going through those, are there any searches or seizures in
10 this case?

11 MR. ALLEN: There could potentially be a motion with
12 respect to the stop that I described.

13 THE COURT: Yes. Just tell me whether there are
14 Fourth Amendment events here. They'll tell me whether there is
15 going to be a motion. Just are there searches and seizures,
16 and what were they?

17 MR. ALLEN: So, search of a vehicle, which produced
18 the robbery equipment I described.

19 THE COURT: Was that pursuant to a warrant?

20 MR. ALLEN: No.

21 THE COURT: What was the basis for the search?

22 MR. ALLEN: My understanding is it was a consent
23 search.

24 THE COURT: All right. A consent search of the
25 vehicle. Any other searches or seizures here? Anything

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1 incident to arrest, for example?

2 MR. ALLEN: The drug ledger I mentioned was seized at
3 an airport.

4 THE COURT: But that's seized not from a defendant.

5 MR. ALLEN: Correct.

6 THE COURT: Was anything seized from the person of
7 either of the defendants when they were arrested?

8 MR. ALLEN: No, your Honor.

9 THE COURT: What about postarrest statements; did
10 either of the defendants give a postarrest statement?

11 MR. ALLEN: There's nothing I'm aware of that's
12 meaningful.

13 THE COURT: You'll, I take it, confirm that with the
14 case agent.

15 MR. ALLEN: I'll confirm it.

16 THE COURT: Any lineups, any show-ups?

17 MR. ALLEN: No.

18 THE COURT: Thank you. Anything else you want to
19 bring to my attention before I turn to the defense?

20 MR. ALLEN: Not at this time, your Honor.

21 THE COURT: Mr. Froccaro.

22 MR. FROCCARO: Judge, you covered it. There's nothing
23 for me to add to that, your Honor. I guess the motion involved
24 would be to challenge the search.

25 THE COURT: Right.

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1 MR. FROCCARO: And the stop as well, your Honor, my
2 understanding.

3 THE COURT: One ball of wax, right.

4 MR. FROCCARO: Correct.

5 THE COURT: But the stop is only challenged if it
6 leads to the receipt of evidence. You can't suppress the
7 defendant.

8 MR. FROCCARO: Of course.

9 THE COURT: So the issue would be ultimately whether
10 or not you're moving to suppress some evidence obtained which
11 is presumably the contents of the car. Right?

12 MR. FROCCARO: Right.

13 THE COURT: Tell me from your perspective, you're the
14 one who's received the initial wave of discovery, how much time
15 you want until the next conference.

16 MR. FROCCARO: Judge, there really isn't much
17 discovery at all. All I received in terms of discovery related
18 to the case are photographs of items that they seized and one
19 page of a police report. I spoke to Mr. Allen before we
20 appeared today and I don't think there's much else, Judge, so
21 I'm ready to set a motion schedule if your Honor's OK with
22 that. I could have motions filed within 45 days, if that's all
23 right with the Court.

24 THE COURT: 45 days is going to be way too long.

25 MR. FROCCARO: 30 days.

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1 THE COURT: Let me hear from Mr. Cohen first. He's
2 not received any discovery. I'm going to try to sync up a
3 schedule that works for both of you. But I take it,
4 Mr. Froccaro, the next move here you're expecting to move to
5 suppress.

6 MR. FROCCARO: That's correct, your Honor.

7 THE COURT: And that suppression motion would
8 presumably be a memo of law as well as some form of factual
9 affidavit that creates a factual basis on which to believe that
10 the seizure was unlawful.

11 MR. FROCCARO: Of course.

12 THE COURT: Very good.

13 Mr. Cohen, what's your perspective?

14 MR. COHEN: Pretty much the same position, your Honor.
15 I recognize that I haven't received discovery, but I know what
16 it is, and the fact of the matter is that my client was
17 actually arrested on the date that this incident allegedly
18 occurred, and there was, I believe, a stun gun, as I recall,
19 that was seized from the vehicle.

20 Am I right, Mr. Allen?

21 THE COURT: Sorry. You were saying what was seized?

22 MR. COHEN: A stun gun.

23 THE COURT: I think Mr. Allen referred to a Taser, I
24 think.

25 MR. COHEN: Yes, a Taser or stun gun.

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1 MR. ALLEN: Correct.

2 MR. COHEN: Eventually that was the subject of a state
3 prosecution which ended up in a disorderly conduct charge and a
4 \$500 fine.

5 THE COURT: Sorry. Back up here. I had not been
6 aware of any state charge in the case. Tell me about that.

7 MR. COHEN: That's why I'm telling you. My
8 understanding was that my client was arrested on the scene. As
9 you know, there was a search.

10 THE COURT: Right.

11 MR. COHEN: And the search revealed a Taser. My
12 client was charged with that and eventually pleaded guilty to
13 disorderly conduct in connection with that, which is not a
14 crime under state law, and I believe paid a \$500 fine. We
15 might move to suppress that as well, your Honor.

16 THE COURT: To be clear, you're talking about the same
17 motion that Mr. Froccaro is making.

18 MR. COHEN: Exactly.

19 THE COURT: Either way, the evidence, the physical
20 evidence, that you would be moving to suppress is based on the
21 theory that the consent search of the car was somehow
22 unconstitutional.

23 MR. COHEN: That's correct.

24 THE COURT: There wasn't consent, for example.

25 MR. COHEN: I just wanted to give your Honor a little

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1 more information. Apparently it didn't come out that there was
2 a prosecution in the state.

3 THE COURT: Right.

4 MR. COHEN: I wanted your Honor to be aware of that.
5 I don't believe that prosecution or the guilty plea to the
6 disorderly conduct bars Mr. Jajaga from making a motion to
7 suppress the physical evidence.

8 THE COURT: You're foreshadowing a motion to suppress,
9 but you're not, I take it, arguing that in any way the state
10 prosecution is a Blockburger problem, is a double jeopardy
11 problem.

12 MR. COHEN: Exactly.

13 THE COURT: Mr. Cohen, do you have any view as to the
14 timetable on which you would want to move to suppress?

15 MR. COHEN: I'm fine with the 30 days.

16 THE COURT: I take it, defense counsel, you're
17 proposing that within 30 days you'll file a suppression motion
18 that will include both a motion and a factual affidavit that
19 creates a factual dispute here.

20 MR. FROCCARO: Correct, Judge, and we'll file it
21 jointly, if that's easier for the Court, so it's not
22 repetitive.

23 THE COURT: You're each entitled to file separately,
24 but obviously I'd be delighted if you coordinated and filed
25 jointly. It certainly makes everyone's life easier.

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1 MR. FROCCARO: Certainly.

2 THE COURT: Apart from that, is there anything else
3 you want to bring to my attention?

4 MR. FROCCARO: Judge, obviously if I have to make the
5 motion, I need to know whether there are any other reports from
6 law enforcement.

7 THE COURT: Before setting a schedule here, Mr. Allen,
8 what work have you done to educate yourself as to the
9 circumstances of the car stop and search?

10 MR. ALLEN: Your Honor, I've conferred with the case
11 agents and read the reports.

12 THE COURT: Was the case agent present?

13 MR. ALLEN: No.

14 THE COURT: Does the case agent know anything about
15 what happened with respect to the stop?

16 MR. ALLEN: They've interviewed the officers, I
17 believe, who conducted the stop.

18 THE COURT: To the extent there is physical evidence
19 here, there are, for example, reports with respect to what
20 happened. Do you have those?

21 MR. ALLEN: Yes, we produced one. I'm not sure
22 whether there are any others. I'll confirm that with the case
23 agent.

24 THE COURT: I'd like you urgently to speak to the case
25 agent and get with the officers who participated in the

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1 underlying search. I want to make sure that the suppression
2 issue is responsibly litigated, and so to the extent there is
3 any Rule 16 evidence that needs to be produced with respect to
4 that it's promptly produced.

5 MR. ALLEN: Yes, although, your Honor, I wouldn't
6 think that to the extent there were narrative reports about the
7 arrest, about the stop, I wouldn't think that was Rule 16.

8 THE COURT: No. Understood. They would be Jencks in
9 connection with any testimony you would be producing, but I
10 want to make sure that to the extent that there is any Rule 16
11 evidence that bears on the stop, you've produced it.

12 MR. ALLEN: Yes, your Honor.

13 THE COURT: Government, how much time would you want
14 to respond to the anticipated suppression motion?

15 MR. ALLEN: 14 days, your Honor. We'll be more quick
16 if your Honor would prefer.

17 THE COURT: Are you in a position to know now the
18 following, which is what a suppression hearing would look like?
19 I ask because while we're all here together it seems to me to
20 make sense to set aside a day, or whatever the relevant amount
21 of time is, for the suppression hearing so that everyone can
22 plan for it. Do you have any sense at this stage how many
23 participants, for example, from law enforcement there were in
24 the stop and seizure?

25 MR. ALLEN: I think there were two, your Honor, and so

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1 I would anticipate the suppression hearing would be at most
2 three or four witnesses, probably just the two.

3 THE COURT: In other words, there would be potentially
4 two officers and potentially the two defendants.

5 MR. ALLEN: Yes, and I don't know, maybe there would
6 be some sort of custodian or something like that.

7 THE COURT: Are you aware of any other fact witness,
8 though?

9 MR. ALLEN: Sorry?

10 THE COURT: Are you aware of any other fact witness?

11 MR. ALLEN: Yes, your Honor. We're aware of another
12 fact witness.

13 THE COURT: No. To the events relating to the search
14 and seizure. In other words, I'm trying to figure out if there
15 are any other persons who might be relevant to the search and
16 seizure.

17 MR. ALLEN: Yes. There was a third person who was
18 present at the stop.

19 THE COURT: All right.

20 MR. ALLEN: A third civilian.

21 THE COURT: Very good.

22 MR. FROCCARO: Judge, can I just raise one other
23 issue? The one report that I have gotten from Mr. Allen is
24 redacted on three out of four pages. Obviously I don't know
25 what's in there, if I could ask, I hate to burden the Court,

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1 but if your Honor could look at it, or your Honor's law clerks,
2 to see whether it's appropriate to have redacted it, because I
3 don't know what's in it.

4 THE COURT: Can you help us out with that, Mr. Allen?

5 MR. ALLEN: Your Honor, a lot of it is the narrative
6 written by the officers that I mentioned earlier, and that
7 narrative is, in my view, 3500 material and not Rule 16
8 material.

9 THE COURT: Sorry. What's the nature of the report,
10 though?

11 MR. ALLEN: There's a report that says I conducted a
12 stop. It occurred at this time, this is why the stop, a basic
13 narrative description of the events that occurred.

14 THE COURT: Mr. Froccaro, is there any reason to
15 disbelieve Mr. Allen that this is in the nature of a narrative
16 that would ordinarily be Jencks Act material as opposed to Rule
17 16?

18 MR. FROCCARO: I don't, your Honor, but I didn't see
19 that. It's a report that has nothing, not even a narrative,
20 the one I saw.

21 MR. ALLEN: I think, your Honor, what I left was a
22 description of the items that were seized. So I redacted the
23 narrative with the exception of those items.

24 THE COURT: Mr. Froccaro, I have to say that Mr. Allen
25 in good faith is representing that he's reviewed the report,

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1 that he's savvy to the distinction between Rule 16 and 3500.
2 He's representing that what is blacked out is in the nature of
3 a retrospective version of events in a memo. That sounds like
4 3500 material to me.

5 MR. FROCCARO: Judge, in every case I've worked on, I
6 usually get the narrative of the stop.

7 THE COURT: Mr. Allen, why don't you do this. Please
8 confer with your supervisors. Present the report to them to
9 make sure that a considered judgment within the office is being
10 made as to whether or not this is properly produced.

11 MR. ALLEN: Yes, your Honor.

12 THE COURT: We're looking at at least six weeks from
13 now as to when the government's opposition is due. That
14 basically brings us effectively to the end of August. I need
15 to schedule what sounds like counsel's saying basically
16 three-quarters of the day. Does that sound like enough for the
17 factual hearing here? Mr. Allen, do you have a sense?

18 MR. ALLEN: I think that would be more than enough,
19 your Honor.

20 THE COURT: Mr. Froccaro.

21 MR. FROCCARO: Sounds good, Judge. Judge, are you
22 going to give us a brief time just to file a reply, if
23 necessary?

24 THE COURT: It's not necessary, unless there is
25 something really unexpected here. The law will be familiar to

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1 all of us and this is going to turn on the facts. I'd be very
2 surprised if a reply brief prior to the hearing were necessary.
3 More likely, after the hearing I'll welcome brief argument from
4 you as to what the evidence showed.

5 MR. FROCCARO: Very good.

6 THE COURT: Why don't we say Monday, September 14. Is
7 that a problem for anyone?

8 MR. COHEN: That's for the hearing?

9 THE COURT: That would be for the factual suppression
10 hearing. I'm trying to schedule it so all of you can organize
11 your lives.

12 MR. COHEN: It is the first day of Rosh Hashanah.

13 THE COURT: You are correct. Is anyone precluded from
14 the second day of Rosh Hashanah?

15 MR. COHEN: I'm not, but right now I'm scheduled for
16 trial starting on the 15th. I have a feeling it might not go
17 to trial, but it may well go to trial. It's already been
18 scheduled.

19 THE COURT: Who is the trial in front of?

20 MR. COHEN: I'm sorry. I don't remember, Judge. If
21 it is a trial, it probably would last two days, three days.
22 It's likely that it won't be a trial, but I just wanted to
23 alert your Honor.

24 THE COURT: Mr. Cohen, I need to schedule this on a
25 day where you can be sure to attend. It sounds like there's a

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1 chance that the 15th and 16th of September you can't attend on
2 account of your trial, even if it might plead.

3 MR. COHEN: That's right. I just wanted to make sure
4 that we didn't set a date and it turned out I couldn't.

5 THE COURT: Would be imperil the 17th as well, or not?

6 MR. COHEN: It might. I'm sorry I'm not being so
7 definite, but I'm not in charge of how long the government
8 takes to present their case.

9 THE COURT: Right.

10 MR. COHEN: It's a short case, that's for sure. Two
11 or three days would be the most that it would go.

12 THE COURT: Let's schedule this for noon on Friday,
13 September 11 and hopefully be able to bring this in within five
14 hours, from noon to five. Counsel, does that make sense?

15 MR. ALLEN: For the government, yes, your Honor.

16 MR. FROCCARO: Yes, your Honor.

17 MR. COHEN: That's fine, your Honor.

18 THE COURT: I have a sentencing at 11:30. I'm going
19 to move that. We'll start this at 11 o'clock. What I want to
20 do is I want to get all the facts in in one day. If we do this
21 from 11 to 5, with short breaks, we ought to have enough time
22 to handle the hearing. Right? Is everyone confident we
23 should, given the nature of this, just get the facts in in a
24 window that is just 11 to 5 on that Friday?

25 MR. FROCCARO: Yes, your Honor.

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1 THE COURT: Mr. Allen, you have the closest view the
2 facts. Is that realistic?

3 MR. ALLEN: I think it only will take a couple of
4 hours, your Honor.

5 THE COURT: Fine. Then let's schedule the suppression
6 hearing for 11 o'clock on September 11.

7 Mr. Allen, is there an application for the exclusion
8 of time between now and September 11?

9 MR. ALLEN: Yes, your Honor, to allow the defense to
10 review discovery, prepare motions and engage in discussions as
11 to disposition, if possible.

12 THE COURT: Mr. Froccaro.

13 MR. FROCCARO: I have no objection.

14 THE COURT: Mr. Cohen.

15 MR. COHEN: No objection, your Honor.

16 THE COURT: I'm going to exclude time between now and
17 September 11 really for a variety of overlapping and
18 reinforcing reasons. First of all, discovery has not yet been
19 provided in this case. Some has, but not all has, and so I
20 want to give the government the opportunity to complete the
21 production of discovery.

22 I also think it's important, Mr. Allen, that you very
23 promptly move past the case agent as the clearinghouse here and
24 get to the actual fact witnesses. I want to make sure that you
25 have a fully omniscient understanding of everything that's out

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1 there and that you have an opportunity then to make a nuanced
2 assessment of what is Rule 16 versus what is Jencks, to make
3 sure the defense promptly has everything that could potentially
4 bear both on guilt or innocence in the case as well as the
5 suppression issue.

6 MR. ALLEN: Yes, your Honor.

7 THE COURT: I'm not in any way changing the line
8 between Rule 16 and Jencks; I just want to make sure that
9 thoughtful attention is given to the requirements under Rule
10 16.

11 MR. ALLEN: Yes.

12 THE COURT: Very good. In addition, look, I'm mindful
13 that this is a new case, defense counsel may have their own
14 factual investigation to do *vis-a-vis* the stop or the
15 underlying circumstances, and the exclusion of time is intended
16 to permit that. Mr. Allen further points out that particularly
17 given the relative newness of the case there is every
18 possibility there will be discussions about a potential
19 disposition, and the exclusion of time is intended to
20 facilitate that as well. I'm going to exclude the time both
21 under Title 18, United States Code, Section 3161(h)(1)(G)
22 relating to potential review of plea offers, as well as Title
23 18, United States Code, Section 3161(h)(7)(A). I find that the
24 interests of justice outweigh the interests of the defendants
25 and the public in a speedy trial.

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1 May I ask you, government, what the bail status is, or
2 not, as to the two defendants.

3 MR. ALLEN: Defendant Jajaga has been released on a
4 bond, and if your Honor's curious, I can give you the
5 description very shortly. Mr. Fiseku is remanded and he was
6 remanded without prejudice initially, and then there was a bail
7 hearing two days later.

8 THE COURT: In front of the magistrate judge?

9 MR. ALLEN: Correct.

10 THE COURT: I take it the outcome of that has not been
11 appealed to me.

12 MR. ALLEN: That's correct.

13 MR. FROCCARO: Judge, I planned to appeal to your
14 Honor. I contacted your Honor's chambers; they suggested that
15 I get the minutes and your Honor would read that, and I'm
16 waiting for the minutes.

17 THE COURT: As soon as you get the minutes, contact my
18 chambers so that we can schedule a convenient time for it that
19 works for the government and for you.

20 MR. FROCCARO: Thank you, your Honor.

21 THE COURT: In any event, bail is continued as to
22 defendant Jajaga. Defendant Fiseku remains in custody, but
23 I'll be amenable if you want to have an appeal of the bail
24 determination once you've got a transcript. I'll also
25 obviously need the pretrial services officer's report.

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1 MR. FROCCARO: You may want an updated one because at
2 the time that was one of the problems with the hearing.
3 Pretrial apparently left out a portion of my client's history.
4 If we could get an update, I guess your Honor would be able to
5 order it, I can't, because there was some confusion about that.

6 THE COURT: When we have occasion to schedule the
7 appeal, alert my chambers to the need at that point to
8 communicate to pretrial to get an updated report.

9 MR. FROCCARO: I will, your Honor.

10 THE COURT: Anything further from the government?

11 MR. ALLEN: No, your Honor.

12 THE COURT: Anything further, Mr. Cohen?

13 MR. COHEN: I just wanted to alert Mr. Allen, very
14 often when you're dealing with police officers, wherever
15 they're from, Bedford, I think it was, sometimes they're not
16 available, so if Mr. Allen would check to make sure they're
17 available on the hearing date.

18 THE COURT: Right.

19 Mr. Allen, make sure they're available on that day.
20 You've committed to that day, it took a little conversation to
21 get there. Please make sure they're available. You've got
22 eight weeks.

23 MR. ALLEN: Sure. It shouldn't be a problem.

24 THE COURT: But Mr. Cohen's point is well taken, that
25 the sooner you reach out to them, the less likely we're going

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1 to have to adjourn.

2 MR. COHEN: And I would expect that we're going to
3 have both officers.

4 THE COURT: You should confer with Mr. Allen. It
5 certainly sounds to me at first blush it's plausible that both
6 officers will be called to testify either by the government or
7 the defense.

8 Therefore, Mr. Allen, have them both available and see
9 where this goes.

10 MR. COHEN: Thank you very much.

11 THE COURT: Anything further from you, Mr. Froccaro?

12 MR. FROCCARO: No, your Honor.

13 THE COURT: Thank you.

14 (Adjourned)